Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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88-1411

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

JOSEPH P. BOYLE, JR.,
Petitioner,

v.

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

JOSEPH P. BOYLE, JR.
Pro Se
13323 Orange Tree Lane
Tampa, Florida 33618
(No telephone)

QUESTIONS PRESENTED FOR REVIEW

The questions presented, as to which the bankruptcy and district courts have departed from the usual and accepted course of judicial proceedings, are:

1. Whether the Court of Appeals, in denying Petitioner's Application for Writ of Mandamus, has sanctioned concurrent jurisdiction between the bankruptcy and district courts in appeals from bankruptcy.

2. Whether the district court has abrogated the mandamus power of the Court of Appeals and acted outside its lawful jurisdiction in dismissing an appeal immediately upon receipt of a petition for mandamus/prohibition filed in the Court of Appeals.

3. Whether the singular actions of the district and bankruptcy courts have created a chilling effect as regards pro se representation in bankruptcy.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW i

TABLE OF AUTHORITIES iv

OPINION BELOW AND STATEMENT OF JURISDICTION 2

RELEVANT STATUTORY PROVISIONS 3

STATEMENT OF THE CASE 4

REASONS FOR GRANTING THE PETITION 10

PROPOSITION I:

IN DENYING PETITIONER'S APPLICATION FOR WRIT OF MANDAMUS, THE COURT OF APPEALS HAS ALLOWED CONCURRENT JURISDICTION BETWEEN THE BANKRUPTCY AND DISTRICT COURT WHICH CONTRAVENES 28 U.S.C. §158(a) REGARDING INTERLOCUTORY APPEALS FROM BANKRUPTCY AND NULLIFIES ATTENDANT STAY PROVISIONS 10

PROPOSITION II:

IN DISMISSING PETITIONER'S APPEAL IMMEDIATELY UPON RECEIPT OF A PETITION FOR WRIT OF MANDAMUS TO THE COURT OF APPEALS, THE DISTRICT COURT ACTED OUTSIDE OF ITS LAWFUL JURISDICTION AND THEREIN ABROGATED THE POWER OF THE COURT OF APPEALS TO ISSUE EXTRAORDINARY WRITS IN AID OF APPELLATE JURISDICTION 14

TABLE OF CONTENTS

Page

PROPOSITION III:

THE SINGULAR ACTIONS OF THE BANKRUPTCY COURT AND DISTRICT COURT HAVE ESTABLISHED A DE FACTO BARRIER TO PRO SE REPRESENTATION [11 USC §1654]WHEREIN PRO SE DEBTORS WILL NOT BE ACCORDED DUE PROCESS AND EQUITABLE "FRESH START" EQUAL BENEFITS UNDER THE BANKRUPTCY CODE 16

CONCLUSION 20

TABLE OF AUTHORITIES

CASES

Page

Accord Gillespie v. United States Steel Corp., 379 U.S. 148, 153 (1964) 11

Beacon Theatres v. Westover, 359 U.S. 500(1959)..... 13

Berger v. United States, 255 U.S. 22,26..... 17

Connelly v. United States District Court 17
255 U.S. 22,36

In re Roberts Farms, Inc., 652 F.2d 793 (1981) 12

Main Line Federal Savings & Loan Assn. v. Tri-Kell, Inc., 721 F.2d 904 (3 Cir. 1983) ... 12

Roche v. Evaporated Milk Ass'n, 319 U.S. 21,23 17

Valley National Bank of Arizona v. Trustee, 609 F.2d 1274 (0th Cir. 1979)..... 12

Will v. United States, 389 U.S. 90, 19 L Ed2d 305, 88 S Ct 269 15

United States v. General Motors Corp., 323 U.S. 373,377 (1944) 11

STATUTES

Title 11 U.S.C. Section 362(c)(1) 3,4

Title 11 U.S.C. Section 727 3

Title 28 U.S.C. Section 158(a) 3,10

TABLE OF AUTHORITIES

STATUTES — Page

Title 28 U.S.C. Section 1254(1) 3

Title 28 U.S.C. Section 1651(a) 14

Title 28 U.S.C. Section 1654 3,16,19

RULES

Bankruptcy Rule 8005 ..... 10, 16

Bankruptcy Rule 8001 ..... 11, 16, 4

OTHER AUTHORITIES

1 Collier on Bankruptcy, §§3.03[1][c][i] (15h ed. 1986)..... 13

1 Cowans Bankr. Law and Prac. §18.7 (1987 ed.).... 12

R. Stern, E. Gressman & S. Shapiro, Supreme Court Practice (6th ed. 1986) 11

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1988

No._____

JOSEPH P. BOYLE, JR.,
Petitioner,

v.

UNITED STATES DISTRICT COURT FOR THE MIDDLE
DISTRICT OF FLORIDA
Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT

The petitioner, Joseph P. Boyle, Jr., Pro Se, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this matter.

OPINION BELOW AND STATEMENT OF JURISDICTION

The decision of the United States Court of Appeals for the Eleventh Circuit is the denial of Application for Writ of Mandamus entered on September 13, 1988 and appears in Appendix A hereto. The decision denying Petitioner's suggestion of rehearing en banc was entered on November 3, 1988 and appears in Appendix B hereto.

The relevant opinions of the district courts were entered on April 22, 1988[Show Cause Order Regarding Stay]in Appendix C hereto; on July 12, 1988[Dismissal of interlocutory appeal]in Appendix D hereto; on July 14, 1988[Denial of Motion for Rehearing]in Appendix E hereto; and on December 5, 1988[Denial of Motion for Leave to File Notice of Appeal Out of Time]in Appendix F hereto. The decision of January 13, 1989[Denial of Motion for Rehearing]was entered in the district court docket; however, Petitioner, despite a request to the law clerk of the presiding judge, has not received a copy of that order.

On January 13, 1989, upon request of Petitioner,

Petitioner, the Honorable Justice Anthony M. Kennedy entered an Order Extending Time To File Petition for Writ of Certiorari to and including March 3, 1989.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1254(1).

RELEVANT STATUTORY PROVISIONS

This case involves 28 U.S.C. §165(a)regarding the Court of Appeal's jurisdiction in the matter of extraordinary writs; 28 U.S.C. §158(a)in the matter of taking interlocutory appeals from the bankruptcy court and attendant stay provisions; 11 U.S.C. §362(c)(1) in the matter of the abandonment of property in bankruptcy; 11 U.S.C. §727 regarding discharges in bankruptcy; and 28 U.S.C. §1654 regarding the issue of pro se representation in the bankruptcy and district courts.

STATEMENT OF THE CASE

On July 14, 1987 Petitioner Pro Se was granted a discharge in a Chapter 7 bankruptcy case filed on April 6, 1987 in the United States Bankruptcy Court for the Middle District of Florida. On July 21, 1987 the bankruptcy court abandoned all scheduled assets pursuant to 11 U.S.C. 362(c)(1). Subsequent to that order, however, the trustee sought to reclaim the assets pursuant to repeated demands via Bankruptcy Rule 2004.

The interlocutory appeal which forms the basis of this writ was filed by Petitioner on January 7, 1988 in response to three orders of the bankruptcy court which denied the following motions: (1) Motion for Expedited Conclusion of Case (2) Motion for Judicial Notice and (3) Motion to Quash and Recall Subpoena, the latter of which was granted in part in that the an allowance was extended to re-file.

Petitioner filed also on January 7, 1988 a Motion for Leave to Appeal Interlocutory Order pursuant to Bankruptcy Rule 8001; and a Motion for Stay of Order pending Appeal was filed in the bankruptcy court by

Petitioner on January 14, 1988. The stay motion was followed by an emergency stay on January 21, 1987. In addition to the two aforementioned attempts at stay pending appeal, Petitioner filed on April 19, 1987 a Motion for Ex Parte Stay of Hearing Pending Motion for Stay in District Court and Pending Request for Removal/Disqualification of United States Trustee to Attorney General of the United States.

On June 1, 1988, the bankruptcy court denied the January 14, 1988 motion for stay.

Meanwhile, Petitioner had filed a motion for stay in the district court on March 14, 1988. The appellees did not oppose the motion. In addition to responding to local status conference and interrogatory orders, Petitioner filed his brief, per extension of time, on March 29, 1988. Appellees, who are trustees and are represented by a lawyer, did not file an appellee brief.

Therefore, on April 4, 1988 Petitioner addressed a letter to the presiding district judge requesting a default be entered and the stay implemented. The district court responded on April 23, 1988 with a Show Cause Order

that directed Appellees to respond in 10 days. Appellee's then filed two responses, one which was dated April 27, 1988 and filed by one of the trustee-appellees on behalf of the other trustee-appellee and himself. One day later the attorney for the trustee-appellees filed a response. The docket sheets both in the bankruptcy court and the district court reflect that the former pleading, though bearing a district court caption, was somehow filed in the bankruptcy court and not transmitted to the district court until after the appeal was dismissed.

Pending the district court's decision on the Show Cause Order, the bankruptcy court entered a default judgment revoking Petitioner's discharge on June 30, 1988. Petitioner, in addition to filing a Motion to Set Aside Default Judgment on July 8, 1988, filed a Petition for Mandamus to the United States Court of Appeals on July 11, 1988 requesting the district court inter alia implement the stay.

Upon receipt of the appellate pleading on July 12th the district court dismissed Petitioner's appeal and denied his motion for leave to appeal filed six months

earlier. Petitioner immediately filed a Motion for Re-hearing on July 13 1988 citing an error on the face of the order that confused the appeal of January 7, 1988 with a former attempt at an interlocutory appeal that was denied by the bankruptcy court on December 14, 1987.

One day later on July 14, 1988 the district court denied the motion for rehearing. Petitioner meanwhile through an addendum to the appellate court dated July 13, 1988 brought notice of the district court dismissal of Petitioner's appeal and, in a second addendum dated July 17, 1988, brought additional notice to the appellate court of the denial of the motion for re-hearing.

On August 16, 1988 Petitioner filed a third addendum in the appellate court concerning the effect of the mandamus on the bankruptcy court's scheduled hearing of his motion to set aside the default judgment that revoked his discharge. A hearing was nevertheless held in the bankruptcy court on August 17, 1988 and the Petitioner's motion to set aside default judgment denied.

Petitioner then filed an emergency motion in the

appellate court seeking inter alia a Show Cause Order against the district court on September 7, 1988 on September 7, 1988. The appellate court denied the Petition for Writ of Mandamus on September 13, 1988.

Petitioner, meanwhile, had filed a notice of appeal of the June 30, 1988 order revoking his discharge and on September 16, 1988 Petitioner filed a Suggestion of Rehearing En Banc in the appellate court conerning the September 13th denial of his application for writ of mandamus. The Suggestion of Rehearing En Banc was denied on November 3, 1988.

Petitioner then sought a stay of mandate concerning this possible writ of certiorari. The appellate court advised Petitioner his stay of mandate pleading of November 14, 1988 was unnecessary in that a mandate does not issue is such a situation.

Petitioner then sought to avoid a certiorari action by filing a motion for leave to appeal the July 12, 1988 dismissal of his interlocutory appeal given the extra-ordinary activity surrounding the then pending application for mandamus. Petitioner was charged a filing fee of $105

for filing a Motion for Leave to File Notice of Appeal Out of Time on November 21, 1988. The motion was denied on December 5, 1988.

Petitioner then filed a Motion for Rehearing and/or to make Additional Findings of Fact on December 22, 1988, the fate of which was denial on January 13, 1989. Petitioner, however, was not served with the denial order and was unsuccessful in requesting a copy from the law clerk of the judge presiding. [See pg.2,¶2 and Exhibit #6 of Petitioner's Application to this Court for an extension of time to file petition, January 28, 1989]

Whereupon Petitioner filed his Application for Extension of Time to File Petition for Writ of Certiorari to the United States Court of Appeals for the Elventh Circuit in this Court, as mentioned above on January 28, 1989.

On January 31, 1989, upon the above-mentioned request of Petitioner, the Honorable Justice Anthony M. Kennedy entered an Order Extending Time to File Petition for Writ of Certiorari to and including March 3, 1989.

REASONS FOR GRANTING THE PETITION

PROPOSITION I

IN DENYING PETITIONER'S APPLICATION FOR WRIT OF MANDAMUS, THE COURT OF APPEALS HAS ALLOWED CONCURRENT JURISDICTION BETWEEN THE BANKRUPTCY AND DISTRICT COURT WHICH CONTRAVENES 28 U.S.C. §158(a) REGARDING INTERLOCUTORY APPEALS FROM BANKRUPTCY AND NULLIFIES ATTENDANT STAY PROVISIONS.

Petitioner pro se has brought an issue of first impression before the Court of Appeals in that the dual exercise of jurisdiction between the bankruptcy and district court in Petitioner's interlocutory appeal of January 7, 1988 negates 28 U.S.C. §158(a) and renders ineffectual Bankruptcy Rule 8005 regarding stays.

Petitioner's three attempts at a stay per motions in the bankruptcy court(two of which were titled as emergency motions), a motion for stay in the district court and ensuing Show Cause Order, were subjected to a six month policy of delay and inaction from both lower courts as a result of concurrent jurisdiction. Petitioner's mandamus proceeding was a timely effort to restore the status quo and establish separate appellate jurisdiction.

The reversal of the Court of Appeal's denial of mandamus would restore the interlocutory appeal in that its

untimely dismissal devolved into multiple and otherwise unnecessary litigation and appellate proceedings.

The questions decided below are, moreover, are "fundamental to the further conduct of this[is]case." United States v. General Motors Corp., 323 U.S. 373, 377 (1944). Accord Gillespie v. United States Steel Corp., 379 U.S. 148, 153 (1964). Accordingly, this writ of certiorari is thus appropriate at this time in that the "case may be reviewed despite its interlocutory status." R. Stern, E. Gressman & S. Shapiro, Supreme Court Practice 225 (6th ed. 1986).

What is of "first impression" in this Court is the fact that the entirety of appellate protection via a Notice of Appeal and the attendant motions for stay and a motion for leave to appeal was disallowed Petitioner. Through a strategy of inaction in both the lower courts that comprised six months, and through a strategy of the district court allowing the bankruptcy court to adjudicate matters which were sub judice before the appellate court via Bankruptcy Rule 8001. appellate protection was denied.

It is well established that a failure to obtain a stay may result in an appeal being mooted and therefore

even application to a Circuit Justice for relief is encouraged when all other remedies fail. See In re Roberts Farms, Inc., 652 F. 2d 793 (1981) ; Valley National Bank of Arizona v. Trustee, 609 F. 2d 1274 (9th Cir. 1979).

Petitioner's Notice of Appeal of January 7, 1988 and attendant motions should have been sufficient to prevent the "procedural morass" that results when lower courts act irrespective of appellate jurisdiction is addressed in Main Line Federal Savings & Loan Assn. v. Tri-Kell, Inc., 721 F. 2d 904 (3 Cir. 1983) and, in respect to bankruptcy practice, 1 Cowans Bankr. Law and Prac. §18.7 (1987 ed.) states that the lower court "loses jurisdiction once an appeal is taken to the circuit."

The "circuit" in this instance is the district court; however, the Petition for Writ of Mandamus, as properly served upon the bankruptcy court, was not sufficient to prevent that court from acting in medias res of appellate jurisdiction.

The acute embarrassment and loss of Chapter 7 revocation rightfully obtained is paralleled only by the

de facto nullification of interlocutory bankruptcy appeal practice and the attendant nullification of stay provisions.

Furthermore, as indicated in 1 Collier on Bankruptcy §§3.03[1[[c][i], at 3-137, et seq. (15th ed. 986), both the bankruptcy court and the district court have confused the authority as regards judging a leave to file an interlocutory appeal and the record reveals, especially through Appendix E - F, that the lower courts have established concurrent jurisdiction in that central matter as regards this case. For the district court's dismissal of Petioner's appeal refers to an "improper" procedure regarding such motions for leave that never occurred.

In Beacon Theatres v. Westover, 359 U.S. 500(1959) the Court reviewed and reversed the refusal of a court of appeals to issue a writ of mandamus that would have required the district court to hold a jury trial rather than try a case without a jury. Petitioner, in this instant case, submits that a writ of mandamus issuing from the Court of Appeals to the district court would restore the status quo and therein let the interlocutory appeal go forward in aid of appellate jurisdiction.

PROPOSITION-II

IN DISMISSING PETITIONER'S APPEAL IMMEDIATELY UPON RECEIPT OF A PETITION FOR WRIT OF MANDAMUS TO THE COURT OF APPEALS, THE DISTRICT COURT ACTED OUTSIDE OF ITS LAWFUL JURISDICTION AND THEREIN ABROGATED THE POWER OF THE COURT OF APPEALS TO ISSUE EXTRAORDINARY WRITS IN AID OF APPELLATE JURISDICTION.

The issues presented to the Court of Appeals for the Eleventh Circuit in Petitioner's Petition for Writ of Mandamus were ones of first impression for an federal appellate court. In effect, the district court, in dismissing Petitioner's appeal immediately upon receipt of the aforementioned petition, abrogated the Court of Appeal's inherent power to "issue all writs necessary in aid of respective jurisdiction" per 28 USC §1651(a).

Petitioner submitted three addenda to his initial Petition to the Court of Appeals detailing the district court's action subsequent to the filing of the Petition. That action included an immediate dismissal of the appeal before the district court--on grounds which were prima facie erroneous in that the district court had actually confused the nature and substance and date of the six month appeal before it--and an immediate dismissal of a motion for rehearing in which the Petitioner sought to bring the errors of dismissal before the district court.

It is unquestionable, therefore, that the district court moved with unprecedented speed to strike an appeal before it, an appeal to which Petitioner had addressed a Petition for Writ of Mandamus to the Court of Appeals so as to effect a stay in the district court.

Such action of the district court evinces an unlawful exercise of its jurisdiction and as stated in Will v. United States, 389 US 90, 19 L Ed2d 305, 88 S Ct 269:

> Mandamus may issue from the Supreme Court to a district court to confine the latter to a lawful exercise of its jurisdiction.

The district court, by failing to properly adjudicate the interlocutory appeal before it, by failing to implement a stay, and by failing to heed the jurisdiction of the Court of Appeals via the mandamus proceeding, has unleashed a Pandora's Box wherein otherwise unnecessary appeals have resulted and wherein Petitioner's discharge in his Chapter 7 case has suffered revocation pending the district court appeal. The reversal of the district court's dismissal order and/or other corrective action would restore the status quo in Petitioner's Chapter 7 case and a speedy resolution could therein ensue.

PROPOSITION III

THE SINGULAR ACTIONS OF THE BANKRUPTCY COURT AND DISTRICT COURT IN PETITIONER'S CASE HAVE ESTABLISHED A DE FACTO BARRIER TO PRO SE REPRESENTATION[11 USC §1654]WHEREIN PRO SE DEBTORS WILL NOT BE ACCORDED DUE PROCESS AND EQUITABLE "FRESH START" EQUAL BENEFITS UNDER THE BANK-RUPTCY CODE

Petitioner's case, as it has progressed through the bankruptcy court and district court, has been an alarming study in the singular and discriminatory treatment of a pro se debtor.

The phenomenon of a bankruptcy court documenting ad hominem comments against pro se representation is exhibited in three transcripts of separate bankruptcy court hearings. The extension of those comments coram judice by officers of the court including the United States Trustee, the panel trustee and the bench itself to actual judicial practice is likewise documented. In particular, Bankruptcy Rules 8001 and 8005 have been re-interpreted both by the bankruptcy court and the district court so as to deny Petitioner Pro Se his due process in the matter of appeal.

The even greater phenomenon of a district court becoming impotent, in its appellate capacity, while injurious acts take place below in matters which are sub judice before that district court, is a factual matter as evidenced by

the revocation of Petitioner's discharge per default judgment in medias res of a district court appeal and a district court Show Cause Order regarding stay that brought matters in the lower court sub judice before the district court.

Petitioner's mandamus proceeding in the Court of Appeals relief, in part, upon Roche v. Evaporated Mil Ass'n, 319 U.S. 21, 23; Berger v. United States 255 U.S. 22,26; and Connelly v. United States District Court 255 U.S. 22, 36 wherein the matter of remedies by appeal are judged inadequate in certain circumstances.

Ergo, the writ of prohibition is employed so as to prevent useless appeals and to confine inferior courts to the lawful exercise of prescribed jurisdictions. However, Petitioner's exercise of an application for such a writ has only resultd in the district court's immediate dismissal of the appeal before it and of the bankruptcy court's proceeding with unseemingly-like speed to deny a vacation of the injurious revocation of discharge judgment.

The documented intolerance of pro se representation

by the bankruptcy court and district court have led directly to multiple appeals, a procedural morass and other unnecessary litigation which could have been avoided if Petitioner's interlocutory appeal was granted its right of due process.

Furthermore, Petitioner sought in vain to confine this matter to the lower courts by requesting the district court permit an appeal of the objectionable order of July 12, 1988 dismissing his appeal by allowing a filing of Notice of Appeal out-of-time. And then Petitioner, in citing the general view of the courts that that a district court or other lower courts could correct its own errors prior to appeal, sought a motion for rehearing of the denial of the motion to file a leave out of time.

Yet another denial followed and as Petitioner indicated in his application to file this writ per extension of time (pg.2.¶2), Exhibit #6, Petitioner has not received a copy of the last denial of the district court despite a certified request to the law clerk of the presiding judge.

Accordingly, it stands to reason if Petitioner, who

is an academic and professional person of honor, can be de facto adjudged anathema by the district and bankruptcy court because of his economical choice of filing bankruptcy pro se, then anyone filing pro se runs the risk of being subjected to a similar interdict.

The Bankruptcy Code, as amended in 1984 and the various modifications which have occurred, had an expressed intent of improving the practice of bankruptcy and of of assuring greater equity and regularity in bankruptcy. The suppression of pro se was not one of the amendments or modifications, nor did any such intolerance of pro se representation exist in the old code or any practice before our courts as proved by 11 USC §1654.

The unprecedented actions of the bankruptcy court and district court have caused undue embarassment, loss of time and money, and--more importantly--a freezing of equitable provisions that guard against what was once viewed as excessive creditor hostility to bankruptcy and, in this instant case, has metamorphosed into a like attitude exhibited by the bankruptcy and district court.

CONCLUSION

For the reasons stated, it is respectfully requested that the Petitioner's Petition for a Writ of Certiorari be granted.

Respectfully submitted,

JOSEPH P. BOYLE, JR.
Petitioner Pro Se
13323 Orange Tree Lane
Tampa, Florida 33618
(No telephone)

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 88-3562

(D.C. NO. 88-138-T-15A)

IN RE:

JOSEPH P. BOYLE, JR.

On Petition for Writ of Mandamus
to the United States District Court
for the Middle District of Florida

Before ANDERSON, CLARK and COX, Circuit Judges.

BY THE COURT:

The petition for writ of mandamus is DENIED.

Petitioner's emergency motion filed on September 7, 1988, seeking an order to show cause and other relief is DENIED.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 88-3562

IN RE:

JOSEPH P. BOYLE, JR.,

Petitioner.

Application for a Writ of Mandamus to the
United States District Court for the Middle
District of Florida

ON PETITION(S) FOR REHEARING AND SUGGESTION(s)OF
REHEARING IN BANC

(ORDER 9/13/88, 11 Cir. 198__, __F.2d__).
(November 3, 1988)
Before ANDERSON, CLARK and COX, Circuit Judges

PER CURIAM:

(*) The Petition(s) for Rehearing are DENIED and no member of the panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing in banc(Rule 35,Federal Rules of Appellate Procedure: Eleventh Circuit Rule 35-5) the Suggestion(s) of Rehearing In Ban are DENIED.

ENTERED FOR THE COURT:

United STates Circuit Judge

APPENDIX C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JOSEPH P. BOYLE,

Debtor-Appellant,

v. Case No. 88-138-Civ-T-15A

STEPHANIE CATES-HARMAN and JOSEPH FRTIZ, Bankruptcy Case No. 87-1780-8P7

Trustee-Appellees.

ORDER

The appellant has filed a motion to stay orders and hearings in the bankruptcy court pending appeal (D-8). The appellees have failed to respond to the motion. Accordingly, it is

ORDERED:

That the appellees will have ten days from the date of this order to show cause why appellant's motion should not be granted.

DONE AND ORDERED at Tampa, Florida this 22nd day of April, 1988.

William J. Castagna
United States District Judge

APPENDIX D

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In Re:

JOSEPH P. BOYLE,

Debtor-Appellant,

Case No. 88-138-CIV-T-15A
Bktcy Case NO. 87-1780-8P7

v.

STEPHANIE CATES-HARMAN,

Trustee-Appellees.

ORDER

The Court has considered the jurisdictional aspects of this appeal. On December 14, 1987, the bankruptcy court issued an order striking the debtor's appeal because the method of taking the interlocutory appeal to this Court was improper. The debtor then filed a motion for leave to appeal interlocutory orders of the bankruptcy court. Upon consideration of the above matters, it is

ORDERED:

That the debtor's motion for leave to appeal interlocutory orders of the bankruptcy court is denied and this appeal is dismissed.

DONE AND ORDERED at Tampa, Florida this 12th day of July, 1988.

WILLIAM J. CASTAGNA
UNITED STATES DISTRICT

APPENDIX E

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In Re:
JOSEPH P. BOYLE,

Debtor-Appellant,

v.

Case No. 88-138-CIV-T-15A
Bkcy Case No. 87-1780-8P7

STEPHANIE CATES-HARMAN,

Trustees-Appellees.

ORDER

The Court has considered the appellant's motion for rehearing and relief from order (D-18). Contrary to appellant's suggestions, the Court's order of July 12, 1988 dismissing this appeal denied the appellant's Manuary 7, 1988 motion for leave to appeal interlocutory orders. Accordingly, it is

ORDERED:

That the appellant's motion for rehearing and relief from order (D-18) is denied.

DONE AND ORDERED at Tampa, Florida this 14th day of July , 1988.

WILLIAM J. CASTAGNA
UNITED STATES DISTRICT JUDGE

APPENDIX F

WHEREFORE, the appellant respectfully moves this court to grant his motionfor leave to file Notice of Appeal out of time.

Respectfully submitted,

Dated. No. 21, 1988

Joseph P. Boyle
Debtor-Appellant Pro Se
13323 Orange Tree Lane
Tampa, Florida 33618
(No telephone)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the aforegoing Motion for Leave to File Notice of Appeal Out of Time was sent on 11/21/88 by pre-paid, first-class mail to the appellees by addressing a copy of the same to: Jary C. Nixon, Attorney for Appellees, Nixon & Nixon, 25 Davis Blvd., Tampa, Fl. 33606

Joseph P. Boyle

This motion~~/petition/application~~ has been duly considered and is hereby ~~GRANTED~~/DENIED this 5th day of December, 1988

UNITED STATES DISTRICT JUDGE